



INTERIOR BOARD OF INDIAN APPEALS

Marion Ross v. Midwest Regional Director, Bureau of Indian Affairs

38 IBIA 100 (09/09/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

MARION ROSS,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 01-64-A
MIDWEST REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 9, 2002

This is an appeal from a January 4, 2001, letter of the Midwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the “application [of Appellant Marion Ross] to transfer her enrollment from the Flandreau Santee Sioux Tribe to the Lower Sioux Indian Community (Community).” The Regional Director’s letter stated that, because the Community had denied Appellant’s application, there was no enrollment transfer request upon which BIA could act. For the reasons discussed below, the Board dismisses this appeal for lack of jurisdiction.

Appellant’s notice of appeal to the Board was sketchy but suggested that her appeal concerned a tribal enrollment dispute over which the Board lacks jurisdiction under 43 C.F.R. § 4.330(b)(1). ^{1/} The Board ordered her to provide a fuller description of the nature of the dispute. In her response, Appellant provided further information but argued that her appeal did not concern a tribal enrollment dispute. Because the response raised the possibility that the Board might have jurisdiction, the Board concluded that full briefing should be allowed. Therefore, it requested the administrative record and, upon receipt of the record, established a briefing schedule.

In both her opening and reply briefs, Appellant argues that no tribal enrollment issue is involved here because she sought only to have BIA transfer her name from one BIA census roll to another BIA census roll and because transfer between the census rolls would not automatically result in Appellant’s enrollment in the Community. In her reply brief, Appellant states explicitly that she “has not asked to be placed on the Lower Sioux Indian Community

^{1/} 43 C.F.R. § 4.330(b) provides: “Except as otherwise permitted by the Secretary or the Assistant Secretary - Indian Affairs by special delegation or request, the Board shall not adjudicate: (1) Tribal enrollment disputes.”

membership rolls.” Reply Brief at 6. The record, however, refutes Appellant’s statement. Indeed, the record shows that enrollment in the Community is exactly what Appellant sought before both the Community and BIA.

On October 29, 1998, Appellant wrote to the Community stating: “I, [Appellant], request that I be enrolled in the [Community] in Morton, MN, where I was born and raised. Enclosed is the Flandreau Indian Census Roll of June 1, 1934 [(upon which Appellant’s name appeared.)] Under the Constitution and By-laws of the [Community], I qualify under Article III - Membership Section I.(b).” 2/

The Community interpreted Article III, section 1(b), of its constitution as authorizing action by the Secretary of the Interior but not by the Community. Therefore, on December 4, 1998, it submitted Appellant’s request to the Regional Director for action, stating that the Community Council unanimously recommended that the Regional Director disapprove the request. On March 10, 1999, the Community Council enacted Resolution 13-99, in which it “oppose[d] the request of [Appellant] to transfer her membership to the [Community], and urge[d] the Secretary of [the] Interior to refuse to approve the transfer request.” On April 11, 2000, the Community Council enacted Resolution 18-00, in which it denied Appellant’s “application * * * to transfer her membership to the [Community].” 3/ Upon review of Resolution 18-00, the Regional Director advised the Community that BIA would take no action because “there is no enrollment transfer over which [BIA] could exercise approval authority.” Regional Director’s June 21, 2000, Letter at 2.

In December 1999, Appellant’s attorney began communicating with BIA concerning Appellant’s request. In a letter dated December 1, 1999, the attorney stated that she had been retained “to assist [Appellant] in seeking enrollment with the [Community].” In subsequent letters, Appellant’s attorney submitted documentation and made inquiries about the matter,

2/ Article III, section 1, of the Community’s constitution provides:

“Membership in the Lower Sioux Indian Community * * * shall consist of the following:

“(a) The bona fide Indian residents of the Lower Sioux Reservation whose names appear on, or are entitled to appear on the official census roll of the Minnesota Mdewakanton Sioux Indians as of April 1, 1934, with the official supplement thereto of January 1, 1935.

“(b) The bona fide Indian residents of the Lower Sioux Reservation whose names appear on various other Sioux Indian rolls, provided that such persons transfer their enrollment to the Minnesota Sioux rolls, with the approval of the Secretary of the Interior.

“(c) All children of any member who is a resident of the Lower Sioux Reservation at the time of the birth of said children.”

3/ The Community’s letter transmitting Resolution 18-00 to the Regional Director stated that the resolution had been enacted in response to BIA’s request that the Community make a final decision on Appellant’s transfer application.

in all cases referring to Appellant's request as one concerning enrollment in the Community. See Attorney's Letters of January 25, 2000, April 20, 2000, and July 6, 2000.

It is clear from the Regional Director's January 4, 2001, letter that he understood Appellant's request to be a request for enrollment in the Community and that he intended to, and did, address that request in his letter.

As noted above, Appellant characterizes the issue in this appeal as one concerning only a transfer from one BIA census roll to another BIA census roll, entirely apart from any tribal enrollment issue. 4/ As also noted above, however, she did not so describe her request when she was before BIA but instead explicitly sought enrollment in the Community. Not surprisingly, therefore, the Regional Director did not address the question Appellant now puts to the Board, i.e., whether "a Regional Director [has] authority to approve or disapprove transfer of an individual from one [BIA] roll to another [BIA] roll without the need for tribal action." Opening Brief at 5; Reply Brief at 2.

Because the Regional Director has not had an opportunity to address this question, the Board declines to address it. 5/ In so doing, the Board follows its well-established practice of declining to consider issues raised for the first time on appeal. E.g., Shoshone-Bannock Tribal Credit Program v. Portland Area Director, 35 IBIA 110, 115-16 (2000).

Despite Appellant's attempt to reframe the issue in this appeal, the issue decided by the Regional Director concerned a tribal enrollment dispute. The Board lacks jurisdiction over tribal enrollment disputes.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

4/ From her statements to the Board, it appears that Appellant now seeks a transfer between census rolls so that she may re-apply to the Community for enrollment. It also appears that she recognizes that she would also have to satisfy other Community requirements for enrollment.

5/ The Board also declines to consider whether it would have jurisdiction over an appeal in which the question was properly raised.